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CONTRACT NO. ANL61
FINANCIAL PROJECT NO. 41588817201
F.E.I.D. NO. 598000435019

MAINTENANCE
MEMORANDUM OF AGREEMENT

THIS AGREEMENT, made and entered into this 1st day of July, 2004, by and between the STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION, a component agency of the State of Florida, hereinafter called the "DEPARTMENT," and the City of Tallahassee, a political subdivision of the State of Florida, existing under the Laws of Florida, hereinafter called the "City".

WITNESSETH

WHEREAS, as a part of the continual updating of the State of Florida Highway System, the Department, for the purpose of safety, protection of the investment and other reasons, has constructed and does maintain 2 and 4 lane (S. R. 10 (U. S. 90)) highway facilities outlined in Exhibit "A" attached hereto and incorporated by reference herein, within the corporate limits of the City of Tallahassee; and

WHEREAS, the City is of the opinion that said highway facilities that contain roadside areas shall be attractively maintained by mowing and edging and sweeping.

WHEREAS, the parties hereto mutually recognize the need for entering into an Agreement designating and setting forth the responsibilities of each party; and

WHEREAS, the City by Resolution No. _____ dated April 14, 2004, attached hereto and by this reference made a part hereof, desires to enter into this Agreement and authorized its officers to do so.

NOW THEREFORE, for and in consideration of the mutual benefits to flow each to the other, the parties covenant and agree as follows:

1. The City shall perform the following standards in a reasonable manner and with all due care:
 - A. Mow, cut and/or trim grass or turf in accordance with the guidelines set forth by the Department on an annual basis.
 - B. Edging and Sweeping to eliminate excess growth of grass and/or vegetation along all curbs and sidewalks.
 - C. Removal of all litter and debris from within the limits of the highway rights-of-way.
 - D. Sweeping along all curbs including median and outside curbs.

The above named functions to be performed by the City, shall be subject to periodic inspections by the Department. Such inspection findings will be shared with the City and shall be the basis of all decisions regarding payment reduction, reworking, agreement termination, or renewal.

2. If at any time after the City has assumed the maintenance responsibility above mentioned, it shall come to the attention of the Department's District Secretary that the limits of Exhibit "A" or a part thereof is not properly maintained pursuant to the terms of this Agreement, the District Secretary may at his option issue a written notice that a deficiency or deficiencies exist(s), by sending a certified letter in care of Mr. Gabriel P. Menendez, Public Works Director, 300 S. Adams St. Tallahassee, Florida 32301 to place said City, on notice thereof. Thereafter, the City shall have a period of thirty (30) calendar days within which to correct the cited deficiencies. If said deficiencies are not corrected within this time period, the Department may at its option, proceed as follows:
 - (a) Maintain the roadside areas or a part thereof, within the Department or Contractor's personnel and deduct the cost of such work from the City's payment said work or part thereof, or
 - (b) Terminate Agreement in accordance with Paragraph 5 of this Agreement and remove, by Department or private contractor's personnel, all of the items not desirable to maintain installed under this Agreement or any preceding agreement except as to items to remain and charge the City for the reasonable cost of such removal.
3. It is understood between the parties hereto that the maintenance items covered by this

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Agreement may be removed, relocated or adjusted at any time in the future as determined to be necessary by the Department in order that the adjacent state road be widened, altered or otherwise changed to meet with future criteria or planning of the Department. The City shall be given sixty (60) calendar days notice to remove said maintenance items after which time the Department may remove said maintenance items.

4. The Department agrees to pay to the City quarterly compensation for the cost of routine maintenance of maintenance items identified in Exhibit "A". The lump sum payment will be in the amount of \$ 150,336.40 per quarter for a total sum of \$ 601,345.60 per year.
 - (a) Payment shall be made only after receipt and approval of goods and services as provided in Section 215.42, Florida Statutes 2000.
 - (b) Any penalty for delay in payment shall be in accordance with Section 215.422(3)(b), Florida Statutes 2000.
 - (c) Bills for fees or other compensation for services or expenses shall be submitted in detail sufficient for a proper pre-audit and post-audit thereof.
 - (d) Records of costs incurred under terms of this Agreement shall be maintained and made available upon request to the Department at all times during the period of this Agreement and for three years after final payment is made. Copies of these documents and records shall be furnished to the Department upon request. Records of costs incurred includes the City of Tallahassee's general accounting records, together with supporting documents and records, of the City and all subcontractors performing work, and all other records of the City and subcontractors considered necessary by the Department for a proper audit of costs.
5. This Agreement may be terminated under any one of the following conditions:
 - (a) By the Department, if the City fails to perform its duties under Paragraph 2, following ten (10) days written notice.
 - (b) By the Department, for refusal by the City to allow public access to all documents, papers, letters, or other material subject to the provisions of Chapter 119, Florida Statutes and made or received by the City in conjunction with this agreement.
 - (c) By either party following sixty (60) calendar days written notice.
 - (d) By both parties, thirty (30) calendar days following the complete execution by both parties, of an agreement to terminate this agreement.
6. The term of this Agreement commences on July 1, 2004 and continues for a period of one (1) year.
7. This Agreement may be renewed on a yearly basis, for a maximum of two one-year renewals. Any renewal must be agreed upon by both parties in writing thirty (30) days prior to the expiration of the existing agreement.
 - (a) This Agreement and all subsequent renewals are subject to availability of funds. Any renewal of this Agreement will be paid according to the terms of this Agreement.
 - (b) Any renewal shall be contingent upon satisfactory performance by the Department as described in Paragraph 1 above.
8. The State of Florida's performance and obligation to pay under this Agreement is contingent upon an annual appropriation by the Legislature.

In the event this Agreement is in excess of \$25,000 or has a term for a period of more than one year, the provisions of Section 339.135, (6)(a), Florida Statutes 2000, are hereby incorporated:

"(a) The Department, during any fiscal year, shall not expend money, incur any liability, or enter into any agreement which, by its terms involves the expenditure of money in excess of the amounts budgeted as available for expenditure during such fiscal year. Any agreement verbal or written made in violation of this subsection shall be null and void, and no money shall be paid thereon. The Department shall require a statement from the Comptroller of the Department that funds are available prior to entering into any such agreement or other binding commitments of funds. Nothing herein shall prevent the making of agreements for a period exceeding one year, but any agreement so made shall be executory only for the value of the services to be rendered or agreed to be paid for in succeeding fiscal years, and this paragraph shall be incorporated verbatim in all agreements of the Department which for any amount in excess of twenty-five thousand dollars and having a term for a period of more than one year."

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9. The City covenants and agrees that it will indemnify and hold harmless DEPARTMENT and all of DEPARTMENT'S officers, agents and employees from any claim, loss, damage, cost, charge, or expense arising out of any act, action neglect or omission by the City during the performance of the Agreement, whether direct or indirect, and whether to any person or property to which DEPARTMENT or said parties may be subject, except that neither the City nor any of its subcontractors will be liable under this section for damages arising out of injury or damage to persons or property directly caused or resulting from the sole negligence of DEPARTMENT or any of its officers, agents or employees.
10. This writing embodies the entire Agreement and understanding between the parties hereto and there are no other Agreements and understanding, oral or written, with reference to the subject matter hereof that are not merged herein and superseded hereby.
11. The Department's District Secretary shall decide all questions, difficulties and disputes of any nature whatsoever that may arise under or by reason of this Agreement, the prosecution or fulfillment of the service hereunder and the character, quality, amount and value thereof; and his decision upon all claims, questions and disputes shall be final and conclusive upon the parties hereto.
12. Vendors providing goods and services to an agency should be aware of the following time frames. Upon receipt, an agency has five (5) working days to inspect and approve the goods and services unless the bid specifications, purchase order, or contract specifies otherwise. An agency has 20 days to deliver a request for payment (voucher) to the Department of Banking and Finance. The 20 days are measured from the latter of the date the invoice is received or the goods or services are received, inspected and approved.
- If a payment is not available within 40 days after receipt of the invoice and receipt, inspection and approval of goods and services, a separate interest penalty of 0.03333 percent per day will be due and payable, in addition to the invoice amount to the vendor. The interest penalty provision applies after a 35 day time period to health care providers, as defined by rule. Interest penalties of less than one (1) dollar will not be enforced unless the vendor requests payment. Invoices which have to be returned to a vendor because of vendor preparation errors will result in a delay in the payment. The invoice payment requirements do not start until a properly completed invoice is provided to the agency.
- A Vendor Ombudsman has been established within the Department of Banking and Finance. The duties of this individual include acting as an advocate for vendors who may be experiencing problems in obtaining timely payment(s) from a state agency. The Vendor Ombudsman may be contacted at (850) 410-9724 or by calling the State Comptroller's Hotline, 1-800-848-3792.
13. This Agreement may not be assigned or transferred by the City in whole or in part without consent of the Department.
14. This Agreement shall be governed by and construed in accordance with the laws of the State of Florida, current Department of Transportation Specification and Department of Transportation Standard Indices. In the event of a conflict between any portion of the contract and Florida law, the laws of Florida shall prevail.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed the day and year first above written.

CITY OF TALLAHASSEE

STATE OF FLORIDA
DEPARTMENT OF TRANSPORTATION

BY:

BY:

District Secretary

ATTEST:

(Seal)

ATTEST:

(Seal)

Executive Secretary

Date

DOT Approval as to
Form and Legality

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THE CITY OF TALLAHASSEE**COST ESTIMATE FOR ONE YEAR**

PAY ITEM NO.	ACT. NO.	DESCRIPTION	UNITS PER CYCLE	COST PER UNIT	CYCLES PER YEAR	TOTAL COST
E104-4-4	484	MOWING INTERMEDIATE	387.971 AC	\$ 50.27	7	\$136,523.12
E110-30	541	LITTER REMOVAL	735.766 AC	\$6.45	12	\$56,948.29
E110-31	543	MECHANICAL SWEEPING	137.215 PM	\$84.96	12	\$139,893.44
E110-32-1	545	EDGING AND SWEEPING	148.226 PM	\$ 602.64	3	267,980.75
		GRAND TOTAL				\$601,345.60

(QUARTERLY: \$ 150,336.40)